

CYNGOR SIR POWYS COUNTY COUNCIL.

**Portfolio Holders for Finance and Human Resources
July 2012**

REPORT BY: Head of Finance

SUBJECT: Pension Fund Issues – Outsourcing of Services

REPORT FOR: Decision

- 1 Following changes to the provisions of the Local Government Pension Scheme; the issuing of the Welsh Authorities Staff Transfers (Pensions) Direction 2012; and, the need for the Council to consider a variety of service delivery options going forward that may include outsourcing, there are a number of policy issues relating to pensions that require attention.

- 2 These matters relate to the Council as an employer participating in the Local Government Pension Scheme as distinct from its role as the administering authority of the Powys County Council Pension Fund. As such an employer, where the Council outsources a service that includes the transfer of staff, a number of issues relating to pension provision arise, particularly where staff are to remain subject to the LGPS via an admission agreement between the contractor (a "Transferee Admission Body") and the Pension Fund.

- 3 The Council as a ceding employer needs to consider the following matters and take a view on each as a matter of policy:
 - a) How is any past service deficit attaching to transferred members of staff to be funded, beyond the transfer date and by whom;
 - b) What financial guarantee / underwriting of potential Pension Fund liabilities attaching to a Transferee Admission Body are the Council willing to bear;
 - c) Should such admission agreements be open or closed to new employees appointed post transfer date who work on the transferred function.

Each of these issues is examined in more detail below.

4. The funding of past service deficiencies relating to the employees of an LGPS employer such as the Council are usually funded via an

individual adjustment applied to the common contribution rate payable by Fund employers in respect of their employees future service accrual. At the 2010 Triennial Valuation of the Powys County Council Pension Fund the common contribution rate was 14.8% of pensionable payroll. However, the Council is currently paying 23.2% of pensionable payroll – the extra 8.4% is to fund, over a period of years, the current past service deficiency in respect of Powys County Council employees and former employees.

On transferring staff, who are members of the LGPS, to another body the past service deficiency attaching to those members needs to be dealt with. This is usually done in one of three ways:

- a) The ceding employer notionally transfers sufficient Pension Fund assets to the Transferee Admission Body so that the deficiency is 100% funded at the date of transfer. This leaves the Transferee Admission Body to fund the future service accrual of transferred staff and any past service deficiency arising in the future in respect of those staff.
- b) The ceding employer retains liability for funding the deficiency in full, irrespective of future changes to the deficiency. In this case, the Transferee Admission Body is solely responsible for funding the future service accrual of transferred staff, even though its actions as an employer may vary the past service deficiency extant at the date of transfer or indeed create a new deficiency going forward.
- c) The past service deficiency is crystallized at the date of transfer and the ceding employer retains liability for it at that level, with any future variation arising as a result of the Transferee Admission Body's actions being funded by that body.

All approaches are used although that set out in a) is perhaps the most common. In addition, approach c) is extremely difficult to use in practice and tends to markedly increase actuarial costs because of the close monitoring required. It should be noted that none of these approaches is entirely risk-free to either the ceding employer or the Transferee Admission Body. Moreover, any additional pension costs arising from the use of these approaches, is likely to result in the Transferee Admission Body requiring increases to the charges it levies against the Council for the provision of the service concerned.

5. Whilst the Pension Fund will require any Transferee Admission Body to purchase and maintain an indemnity or bond to protect the Pension Fund against liabilities arising where the body becomes insolvent, there is an additional need to ensure that the Pension Fund is protected where such an indemnity or bond proves to be insufficient.

To mitigate this possibility it is usual for the ceding employer to underwrite / guarantee the Transferee Admission Body's pension

liabilities so that the Pension Fund is fully protected. Therefore, the Council should consider what level of risk it is willing / able to bear in respect of any external outsourcing that results in a transfer of staff and where those staff remain subject to the LGPS.

6. The matter of open / closed arrangements in respect of new employees appointed post transfer date needs to be addressed. It should be noted that such a member of staff could have rights under TUPE to transfer to the Council if reversion of the contract occurs. Moreover, had the outsourcing not occurred, any new member of staff appointed by the Council would have an automatic right of entitlement to join the LGPS.

The above notwithstanding, this matter is often determined via consultation and negotiation with the Transferee Admission Body.

7. Portfolio holders are asked to agree the following recommendations in respect of any future admission agreements arising from a transfer of staff to a Transferee Admission Body:
 - a) That past service deficiencies be fully funded at the point of transfer via a notional allocation of Pension Fund assets. Any further deficiencies arising will be funded by the Transferee Admission Body concerned.
 - b) That Powys County Council will guarantee any Pension Fund liabilities arising from the failure of a Transferee Admission Body (to whom it has transferred staff) which remain outstanding on the cessation of the Transferee Admission Body's participation in the Powys County Council Pension Fund. However, the Council will need to quantify, as far as possible, the liabilities it is to guarantee and to consider its risk appetite for that level of guarantee.
 - c) That the question as to whether an admission agreement with a Transferee Admission Body be open or closed to new employees appointed to work on the transferred function after the date of transfer, be a matter of agreement between the Council and any Transferee Admission Body.